

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ROSE MAGYAR, on behalf of herself and all others similarly situated,  <div style="text-align: right;">Plaintiff,</div>	vs.	DELL, INC.; and DELL FINANCIAL SERVICES LLC,  <div style="text-align: right;">Defendants.</div>
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CASE NO. 12-CV-1899 H (RBB)

**ORDER GRANTING  
UNOPPOSED MOTION TO  
COMPEL ARBITRATION**

[Doc. No. 19]

On December 17, 2012, Defendants Dell, Inc. and Dell Financial Services LLC (“Dell”) filed a motion to compel arbitration. (Doc. No. 19.) On January 7, 2013, Plaintiff Rose Magyar filed a notice of non-opposition to Dell’s motion to compel arbitration. (Doc. No. 20.) A hearing on the matter is currently scheduled for January 22, 2013 at 10:30 a.m. The Court, pursuant to its discretion under Local Rule 7.1(d)(1), determines this matter is appropriate for resolution without oral argument, submits the motion on the parties’ papers, and vacates the hearing. For the reasons below, the Court grants Dell’s motion to compel arbitration.

**Background**

On August 1, 2012, Plaintiff filed a class action complaint against Dell, Inc., alleging causes of action for violation of the Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. §§ 227 et seq. (Doc. No. 1.) On October 8, 2012, Plaintiff filed a first amended

1 complaint adding Dell Financial Services LLC as a Defendant. (Doc. No. 12.) By the present  
 2 motion, Dell moves to dismiss or stay this action and compel arbitration of Plaintiff's claims  
 3 pursuant to an agreement that Plaintiff entered into with Dell Financial Services LLC. (Doc.  
 4 No. 19-1.) In response, Plaintiff states that "[a]fter careful consideration of the controlling  
 5 authorities, review of newly-discovered facts, and negotiations with Dell's counsel, Plaintiff  
 6 has concluded that opposition to the motion would be futile at this juncture." (Doc. No. 20 at  
 7 2.)

## 8 Discussion

### 9 **I. Legal Standards**

10 The Federal Arbitration Act ("FAA") provides that a written provision in a "contract  
 11 evidencing a transaction involving commerce to settle by arbitration a controversy thereafter  
 12 arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such  
 13 grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The  
 14 Supreme Court has explained that the FAA reflects an "emphatic federal policy in favor of  
 15 arbitral dispute resolution." KPMG LLP v. Cocchi, 132 S. Ct. 23, 25 (2011); see also AT&T  
 16 Mobility LLC v. Concepcion, 131 S. Ct. 1740, 1745 (2011) (stating that the FAA reflects a  
 17 "liberal federal policy favoring arbitration agreements.>"). Under the FAA, federal courts are  
 18 required to rigorously enforce an agreement to arbitrate. See AT&T Mobility, 131 S. Ct. at  
 19 1745-46; Perry v. Thomas, 482 U.S. 483, 490 (1987). "By its terms, the [FAA] leaves no place  
 20 for the exercise of discretion by a district court, but instead mandates that district courts shall  
 21 direct the parties to proceed to arbitration on issues as to which an arbitration agreement has  
 22 been signed." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985).

23 "The court's role under the Act is . . . limited to determining (1) whether a valid  
 24 agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute  
 25 at issue." Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000).  
 26 In determining the existence of an agreement to arbitrate, courts look to "general state-law  
 27 principles of contract interpretation, while giving due regard to the federal policy in favor of  
 28 arbitration." Wagner v. Stratton Oakmont, Inc., 83 F.3d 1046, 1049 (9th Cir. 1996); see also

1 Rent-A-Center, West, Inc., v. Jackson, 130 S. Ct. 2772, 2776 (2010) (“[A]rbitration is a matter  
 2 of contract.”). In addition, courts are directed to resolve any “ambiguities as to the scope of  
 3 the arbitration clause itself . . . in favor of arbitration.” Volt Info. Sciences, Inc. v. Bd. of  
 4 Trustees of Leland Stanford Jr. Univ., 489 U.S. 468, 476 (1989).

## 5 **II. Analysis**

6 Dell has presented the Court with evidence showing that Plaintiff entered into a credit  
 7 agreement with Dell Financial Services LLC containing an arbitration clause when she opened  
 8 a Dell Preferred Account to finance her purchases of Dell products. (Doc. No. 19-2,  
 9 Declaration of Stephen J. Snyder (“Snyder Decl.”) ¶¶ 7-10, 14.) Plaintiff does not dispute that  
 10 she entered into this agreement with Dell Financial Services LLC; indeed, Plaintiff does not  
 11 oppose Dell’s motion. (Doc. No. 20.)

12 The credit agreement contains the following arbitration provision:

13 [A]ny claim, dispute or controversy (whether based upon contract; tort,  
 14 intentional or otherwise; constitution; statute; common law; or equity and  
 15 whether pre-existing, present or future), including initial claims, counter-claims,  
 16 cross-claims and third-party claims, arising from or relating to this Agreement  
 17 or the relationships which result from this Agreement, including the validity and  
 enforceability of this arbitration clause, any part thereof or the entire Agreement  
 (“Claim”) shall be decided, upon the election of you or us, by binding arbitration  
 pursuant to this arbitration provision and the applicable rules and procedures of  
 the arbitration administrator . . . .

18 (Doc. No. 19-2, Snyder Decl. Ex. A at 5.) The agreement also provides that “[c]laims subject  
 19 to this arbitration provision may not be . . . arbitrated on a class basis, in a representative  
 20 capacity on behalf of the general public . . . .”<sup>1</sup> (Id.)

21 Plaintiff’s claims for violations of the TCPA are based on allegations that Dell  
 22 repeatedly called Plaintiff in an effort to collect on a past-due balance. (FAC ¶¶ 7-11.) Dell  
 23 argues that Plaintiff’s claims are clearly subject to the above arbitration provision because the  
 24 claims arise out of her relationship with Dell resulting from the credit agreement. (Doc. No.

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25  
 26 <sup>1</sup> The agreement also provides that the arbitration provision also applies to Dell  
 27 Financial Services LLC’s parent company Dell, Inc. (Doc. No. 19-2, Snyder Decl. Ex. A at  
 28 5 (“For purposes of this arbitration provision, the terms ‘we’ and ‘us’ shall mean CIT Bank and  
 Dell Financial Services LLC, their parents, direct and indirect subsidiaries [and] affiliates . .  
 .”).)

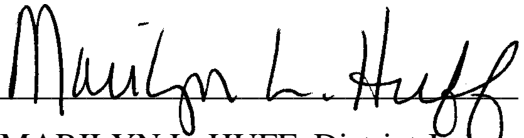
19-1 at 10.) Plaintiff does not dispute that her claims are subject to the arbitration provision and concedes that opposition to Dell's motion would be futile. (Doc. No. 20.) The Court concludes that Plaintiff's TCPA claims are subject to the arbitration provision contained in the credit agreement. See, e.g., McNamara v. Royal Bank of Scot. Group, PLC, 2012 U.S. Dist. LEXIS 158580 (S.D. Cal. Nov. 5, 2012) (finding plaintiff's claims for violation of the TCPA were subject to arbitration based on an arbitration provision contained in a Credit Card Agreement); Knutson v. Sirius XM Radio Inc., 2012 U.S. Dist. LEXIS 75698 (S.D. Cal. May 31, 2012) (finding plaintiff's claims for violation of the TCPA were subject to arbitration based on an arbitration provision contained in a Customer Agreement). Accordingly, the Court grants Dell's motion to compel arbitration of Plaintiff's claims.

### **Conclusion**

For the reasons above, the Court grants Dell's unopposed motion to compel arbitration. The Court dismisses the action without prejudice to the parties seeking to reopen the case to enforce any arbitration award.

**IT IS SO ORDERED.**

DATED: January 10, 2013

  
MARILYN L. HUFF, District Judge  
UNITED STATES DISTRICT COURT